

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN RE: NOTICE OF PROPOSED RULEMAKING

RM 06-02

(LSA Document # 06-45)

REPLY COMMENTS OF THE INDIANA OFFICE
OF UTILITY CONSUMER COUNSELOR

The Indiana Office of Utility Consumer Counselor (OUCC) makes the following reply to comments previously submitted to the Indiana Utility Regulatory Commission (IURC) by Verizon and Embarq in this Rulemaking proceeding to amend 170 IAC 7-6-1, *et seq.*

1. Reply to Comments on Stated Scope of Proposed Rule. There is no reason to limit the stated scope of the proposed rule to “customer notice” or to strike any portion of the rule beyond customer notice requirements. The proposed rule properly requires notice to both affected customers and to the IURC. It also imposes requirements on wholesale service providers seeking to disconnect service to wholesale customers, all within the authority granted to the IURC under the Telecommunications Act of 1996 (“TA-96”) and under Ind. Code 8-1-2-5 (authority the IURC specifically retains under Indiana’s new telecommunications statute, H.E.A. 1279).

2. Reply to Comments on Definitions. The OUCC has no objection to the requested clarification. However, as recommended in the OUCC's Initial Comments, the term "provider of last resort" under H.E.A. 1279 is not synonymous with "eligible telecommunications carrier (ETC)" under TA-96. The definition used in this rule should be limited to "providers of last resort (POLRs)" under H.E.A. 1279 and should not extend to ETCs under TA-96.

After the OUCC's Initial Comments were filed, the IURC issued GAO 2006-3 which assumes identical treatment of POLRs and ETCs with regard to relinquishment of POLR & ETC status. The OUCC believes the more prudent course would be to address only state POLR status in this rule and in the new GAO, and to follow Congressional directives in 47 U.S.C. 214(e)(4) that require ETCs to continue to provide service for up to one year after notifying the Commission of their intent to relinquish ETC status in a given area, thus ensuring a smooth transition of existing customers to new carriers and new ETC(s), without massive service interruptions that could occur if relinquishment can be effected automatically after 60 days advance notice to the IURC. Congress understood that when a dominant carrier exits the market, it could take up to a year to properly fill the dominant providers' ETC shoes. The IURC should afford Indiana consumers greater protection by following federal guidelines for relinquishment of ETC status – something that is not specifically covered by POLR relinquishment provisions in H.E.A. 1279.

3. Reply to Comments on Required Notice Under 170 IAC 7-6-3. The meaning of the parenthetical Verizon & Embarq propose to insert in the first line of 170

IAC 7-6-3(d) is unclear. Perhaps the insert should be rephrased as follows: “[as required under subsection (b)(2) of this rule].” The proposed addition of subsection (d)(3) could be read to require the IURC to provide notice, instead of permitting the IURC to require POLR(s), ETC(s) or interested entities other than the IURC to provide notice to the exiting LEC’s customers. There is no need to add subsection (d)(3) – since the option described there is encompassed by the broader language used in subsection (d)(1) and the proposed language could be read as a limitation on the options already available to the IURC under subsection (d)(1).

As to the language in subsection (g) that Verizon and Embarq found unclear, the OUCC’s understanding is that, in the event an entity that does not hold a CLEC CTA is using another LEC’s facilities or services to provide unregulated services (e.g., voice over internet protocol service a/k/a VOIP) to others that, absent actual knowledge, the LEC whose facilities or services are being used would not be charged with having constructive notice that the other communications service provider was using the LEC’s facilities or services to provide service to others. Absent the exception in the draft rule, the disconnecting LEC would, in effect, be charged with constructive notice of the fact that the entity whose service is being disconnected was, in turn, providing communications services (presumably unregulated ones) to other end users. The OUCC does not see a need to change subsection (g) of the proposed rule, but would not object to revisions that continue to convey the OUCC’s understanding of that subsection.

4. Reply to Comments Regarding Notice of Bankruptcy. Due to federal preemption concerns, the OUCC recommends that the IURC reject the language Verizon and Embarq suggested adding to 170 IAC 7-6-4 as a new subsection (d).

5. Reply to Comments on Relinquishment of Service by a LEC. The OUCC agrees with Verizon and Sprint's recommendation that all LECs (not just POLRs or ETCs) be required to provide a toll free telephone number for affected customers to contact to request service provider changes or to seek answers to any questions they might have. [See Verizon/Embarq proposed change to 170 IAC 7-6-5(b)(5).] The OUCC generally supports the notion that the exiting LEC remain responsible for customer notice and service issues, until the customer is fully transitioned to another LEC. However, the recommended change or addition of a new subsection (c) could be read as limiting the IURC's authority to require Indiana ETCs or POLRs to take action to protect consumers from preventable service interruptions. Therefore, the OUCC does not support Verizon and Embarq's recommended addition of a new subsection (c).

6. Reply to Comments on CTA Revocations. The OUCC agrees with Verizon and Embarq's recommendation that a hearing should be required before the IURC revokes a LEC's CTA unless: (a) the LEC is not an ETC, and (b) the LEC itself has requested revocation of (i.e., is voluntarily relinquishing) its CTA. The OUCC agrees that hearings should always be required before the IURC revokes or approves voluntary relinquishment of any CTAs granted to LECs for areas in which the LEC has obtained ETC designated from the IURC under TA-96. Rather than adding specific exceptions to the language of the proposed rule, as Verizon and Embarq suggested, the

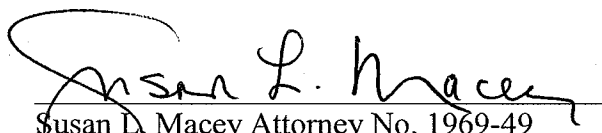
OUCC recommends that the hearing requirement be added, as described above, with a general statement that the IURC comply with state law (and any applicable federal law, in the case of ETCs) in deciding CTA revocation cases, after notice and hearing.

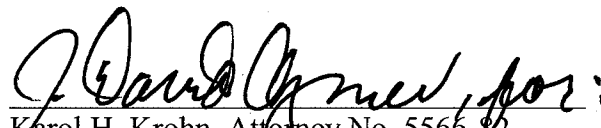
7. Concluding Comments. The OUCC urges the Commission to protect customers of Indiana's 47 ETCs from unnecessary service interruptions and other chaos by following the course outlined in the OUCC's initial comments and in paragraphs 2 and 6 above (and to immediately modify GAO 2006-3 to conform to the above recommendations). The IURC should make it clear that provisions concerning cessation of service by Providers of Last Resort apply only to obligations under H.E.A. 1279 – not to federal requirements for relinquishment of universal service under 47 U.S.C. 214(e)(4).

The OUCC understands that industry representatives would like certain rule changes to take effect as soon as possible (e.g., changing advance notice requirements from 30 business days to 30 calendar days). To avoid unnecessary delay in implementing that change, the OUCC would not object to finalizing the rulemaking process on that and any other uncontested changes in the proposed rule. Even if the Commission revises other parts of the proposed rule and initiates a new rulemaking proceeding to adopt those revisions, there is no reason to delay implementation of the change from business to calendar days for the advance notice requirements.

The OUCC appreciates the opportunity to contribute to this dialogue and looks forward to the adoption of a final rule that will adequately protect all consumers' interests – business and residential customers alike.

Respectfully submitted,


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